

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

In re: Exide Technologies, <i>et al.</i>	)	Bankr. Case No. 02-11125 (KJC)
	)	
EnerSys Delaware, Inc.,	)	
Appellant,	)	Civil Action No. 06-302 (SLR)
	)	
v.	)	
	)	
Exide Technologies	)	
Appellee.	)	
	)	

**ENERSYS DELAWARE, INC. F/K/A ENERSYS, INC.’S DESIGNATION OF ITEMS  
FOR RECORD ON APPEAL TO COURT OF APPEALS AND STATEMENT OF  
ISSUES ON APPEAL**

EnerSys Delaware, Inc. f/k/a EnerSys, Inc. (“**EnerSys**”), by and through their undersigned attorneys, pursuant to Rule 6(b)(2)(B) of the Federal Rules of Appellate Procedure, hereby designates the items to be included in the record and sets forth the statement of issues on its appeal from the “*Memorandum Order*” (Docket No. 24) (the “**District Court Order**”) entered by the District Court on February 27, 2008.

**I. Designation Of Items For Record On Appeal.**

Tab No.	Docket No. (Bankr. Docket unless otherwise specified)	Filing/Entry Date (Bankr. Docket unless otherwise specified)	Document Name
1.	1613	03/14/2003	Notice to Reject the Asset Purchase Agreement Between Exide Corporation and Yuasa Battery (America), Inc.

<b>Tab No.</b>	<b>Docket No. (Bankr. Docket unless otherwise specified)</b>	<b>Filing/Entry Date (Bankr. Docket unless otherwise specified)</b>	<b>Document Name</b>
2.	1614	03/14/2003	Notice to Reject the Asset Purchase Agreement Between Exide Corporation and Yuasa Battery (America), Inc.
3.	1615	03/14/2003	Notice to Reject the Administrative Services Agreement Between Exide Corporation and Yuasa Battery (America), Inc. Dated June 10, 1991
4.	1616	03/14/2003	Notice to Reject The Miscellaneous Services Agreement Between Exide Corporation and Yuasa-Exide, Inc.
5.	1617	03/14/2003	Notice To Reject Letter Agreement Dated December 27, 1994 from Ernest J. Choquette to Bernard F. Stewart
6.	1618	03/14/2003	Notice to Reject the Trademark and Trade Name License Agreement Between Exide Corporation and Yuasa Battery (America), Inc.
7.	1726	04/14/2003	Objection to Notices to Reject (A) Asset Purchase Agreement, (B) Trademark and Tradename License Agreement, (C) December 27, 1994 Letter Agreement, (D) Administrative Services Agreement Dated June 10, 1991, and (E) Administrative Services Agreement Dated April 1, 1992
8.		04/23/2003	Proof of Claim filed by EnerSys, Inc.
9.		6/25/03	Objections and Responses to Debtor's First Request for Production of Documents Addressed to EnerSys, Inc.

<b>Tab No.</b>	<b>Docket No. (Bankr. Docket unless otherwise specified)</b>	<b>Filing/Entry Date (Bankr. Docket unless otherwise specified)</b>	<b>Document Name</b>
10.	3191	11/20/2003	Order Denying the Debtor's Motion for Summary Judgment that the Trademark License is Executory
11.	3461	01/14/04	All Exhibits to Debtors' Pre-Rejection Hearing Brief
12.		11/20/2003	Transcript of Hearing held on 11/20/03 pp. 19 - 62
13.		01/28/04	Transcript of Hearing held on 1/28/04 p. 102
14.	3604	02/11/2004	Court's Letter Ruling dated 2/11/04 regarding in Camera Examination of Documents
15.	3914	03/15/2004	FILED UNDER SEAL: Transcript of Hearing Held on 3/3/04 pp. 54 – 69 / 75 – 76 / 78 – 117 / 133 / 160 – 162 / 167 – 168 / 172 – 173 / 177 - 187 / 192 / 195
16.	3916	03/15/2004	FILED UNDER SEAL: Transcript of Hearing Held on 3/5/04 pp. 6 – 7 / 13 / 16 / 19 – 22 / 31 – 45 / 50 – 72 / 75 – 76 / 78 – 82 / 96 – 97 / 100 – 101 / 108 – 109 / 118 – 120 / 128 / 131 / 142 – 143 / 148 / 156 – 158 / 170 – 173 / 175 / 177 / 181 – 182 / 229
17.	3918	03/15/04	Plan Filed by Exide Technologies

<b>Tab No.</b>	<b>Docket No. (Bankr. Docket unless otherwise specified)</b>	<b>Filing/Entry Date (Bankr. Docket unless otherwise specified)</b>	<b>Document Name</b>
18.	3917	03/15/2004	FILED UNDER SEAL: Transcript of Hearing Held on 3/4/04 pp. 22 – 23 / 27 – 29 / 35 – 38 / 41 – 43 / 45 / 68 – 69 / 90 – 91 / 107 – 109 / 111 – 113 / 117 – 118 / 134 / 136 / 141 – 142 / 151 / 161 – 162 / 169 – 176 / 184 - 201 / 212 / 232 – 233 / 241 / 245 – 246 / 250 – 253 / 256 – 257 / 273 / 282 – 290 / 293 – 326 / 316 - 317
19.	4002	03/23/2004	FILED UNDER SEAL: Transcript of Hearing Held on 3/12/04 pp. 3 – 6 / 43 / 46 - 47 / 75 – 76 / 84 / 89 – 90 / 106 – 109 / 120 – 123 / 133 – 137 / 143 – 145 / 153 – 157 / 162 – 163 / 171 – 173 / 178 – 181 / 217 / 247 - 248
20.		03/25/2004	Transcript of Hearing Held on 3/25/04 pp. 25 / 58 – 108 / 119 – 130 / 133 – 140 / 144 – 145 / 148 - 149
21.		03/31/2004	Transcript of Hearing Held on 3/31/04 pp. 28 / 56 – 57
22.		04/13/04	Exhibit E to June 10, 1991 Asset Purchase Agreement: Administrative Services Agreement & March 14, 2003 Notice to Reject Same (Exide Trial Exh. 4)
23.		04/13/04	Exhibit R to Asset Purchase Agreement (Exide Trial Exh. 12)
24.		04/13/04	Supply & Recycling Agreement (YEBC Division) ( Exide Trial Exh. 17)

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25.		04/13/04	Amendment to Partnership Agreement (Exide Trial Exh. 20)
26.		04/13/04	Exide Industrial Division Trademarks (Exide Trial Exh. 27)
27.		04/13/04	Letter from P. Price to C. Larkin dated 5/21/91 (Exide Trial Exh. 28)
28.		04/13/04	Letter from S. Johnson to C. Larkin dated 5/24/91 (Exide Trial Exh. 29)
29.		04/13/04	Letter from C. Larkin to S. Johnson dated 6/3/91 (Exide Trial Exh. 30)
30.		04/13/04	Draft Schedule 9.1 dated 5/21/91 (Exide Trial Exh. 31)
31.		04/13/04	Memorandum for Lenders re Exide Sale of Assets to Yuasa Battery dated 6/7/91 (Exide Trial Exh. 32)
32.		04/13/04	Various Letters (Exide Trial Exh. 47)

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33.		04/13/04	PowerPoint Presentation (Exide Trial Exh. 75)
34.		04/13/04	Chart re Industrial Energy Europe Summary (Exide Trial Exh. 155)
35.		04/13/2004	Email with Attachment (Exide Trial Exh. 156)
36.		04/13/2004	Chart re Network Power North American Impact Analysis (Exide Trial Exh. 157)
37.		04/13/2004	Demonstrative – Deliberations Timeline (Exide Trial Exhibit 200)
38.		04/13/2004	Trademark and Trade Name License Agreement dated 06/10/91 Bates numbered ENER-1-4144-4158 (EnerSys Trial Exh. 1)
39.		04/13/2004	Administrative Services Agreement dated 06/10/91 (EnerSys Trial Exh. 2)
40.		04/13/2004	Asset Purchase Agreement dated 06/10/91 Bates numbered ENER-1-3752-3821 (EnerSys Trial Exh. 3)

<b>Tab No.</b>	<b>Docket No. (Bankr. Docket unless otherwise specified)</b>	<b>Filing/Entry Date (Bankr. Docket unless otherwise specified)</b>	<b>Document Name</b>
41.		04/13/2004	Miscellaneous Services Agreement dated 04/01/92 from Exide Dep. Exh. 22 (EnerSys Trial Exh. 4)
42.		04/13/2004	Administrative Services Agreement dated 04/01/92 from Exide Dep. Exh. 21 (EnerSys Trial Exh. 5)
43.		04/13/2004	Letter Agreement from E. Choquette to B. Stewart dated 12/27/94 (EnerSys Trial Exh. 6)
44.		04/13/04	Expert Report of Brian Blonder w/attachments dated 10/20/03 (EnerSys Trial Exh. 7)
45.		04/13/2004	Lost Profits Calculation Bates numbered ENER-10-0023 (EnerSys Trial Exh. 178)
46.		04/13/2004	Exide Technologies Board of Directors Meeting Minutes dated 3/19/03 Bates numbered E3-10150-10162 (EnerSys Trial Exh. 188)
47.		04/13/2004	Letter of Intent between Yuasa and Exide Corp. dated 3/26/91 (EnerSys Trial Exh. 209)

<b>Tab No.</b>	<b>Docket No. (Bankr. Docket unless otherwise specified)</b>	<b>Filing/ Entry Date (Bankr. Docket unless otherwise specified)</b>	<b>Document Name</b>
48.		04/13/2004	Demonstrative Exhibit (Analysis Slides) (EnerSys Trial Exh. 248)
49.		04/13/2004	Demonstrative Exhibit (Impact of Reversion) (EnerSys Trial Exh. 249)
50.		04/13/2004	Business Summary from C. Muhlhauser dated 03/19/03 from Bright Dep. Exh. 31 (EnerSys Trial Exh. 250)
51.		04/03/2006	Opinion by Kevin J. Carey, United States Bankruptcy Judge
52.		04/03/2006	Order Granting Motion to Reject Notice to Reject the Trademark and Trade Name License Agreement Between Exide Corporation and Yuasa Battery (America), Inc.
53.	5385 (Bankr. Ct.) 1 (District Ct.)	04/11/04	Notice of Appeal of EnerSys Delaware, Inc. f/k/a EnerSys, Inc., of Bankruptcy Court Order Granting Debtors' Motion to Reject
54.	24 (District Ct.)	02/27/08	Memorandum Order Denying Appeal, Judge Robinson, United States District Court
55.	25 (District Ct.)	03/24/08	Notice of Appeal of EnerSys Delaware, Inc. f/k/a EnerSys, Inc., of District Court Order Denying Appeal



## **II. Statement of Issues on Appeal.**

1. Did the Bankruptcy Court and District Court err in concluding that rejection of the Agreements effects a termination of the Agreements, including the Trademark Agreement, and divests EnerSys of any rights under the Agreements, including the Trademark Agreement?

2. Did the Bankruptcy Court and District Court err in concluding that the Agreements have not been substantially performed by either EnerSys or Exide and remain executory notwithstanding evidence that, pursuant to the Agreements, in 1991, Exide transferred an entire industrial battery business and EnerSys paid Exide over \$130.0 million, representing the full consideration for the business?

3. Did the Bankruptcy Court and District Court err in concluding that the exclusive remedy provisions of Section 13.6 of the Asset Purchase Agreement and Section 8 of the Trademark Agreement do not preclude both EnerSys and Exide from terminating all of their remaining performance under the Agreements in the event of breach by the other and, so, do not preclude a finding that the Agreements are executory?

4. Did the Bankruptcy Court and District Court err in concluding that both EnerSys and Exide have remaining material obligations under the Agreements notwithstanding that none of the remaining obligations can fairly be said to go to the root or essence of the Agreements and notwithstanding that neither Exide nor EnerSys would be deprived of the substantial benefit of its bargain if the other failed to perform any of its remaining obligations?

5. Did the Bankruptcy Court and District Court err in concluding that Exide's failure to seek rejection of all of the agreements executed in 1991 did not preclude rejection of the Agreements?

6. Did the Bankruptcy Court and District Court err in concluding that the Agreements, including the Trademark Agreement, did not evidence a closed sale of the right to use the "Exide" trademark in the industrial battery business?

7. Did the Bankruptcy Court and District Court err in concluding that Exide's decision to reject the Agreements satisfied the business judgment test applicable to a bankrupt estate given that it was based upon inadmissible and incomprehensible sales forecasts and speculative and unsupported trial testimony of certain Exide employees and lacked any analysis of the amount of the likely rejection damage claim?

Dated: April 21, 2008

Respectfully submitted  
STEVENS & LEE, P.C.

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**CERTIFICATE OF SERVICE**

I, Joseph Grey, hereby certify that on April 21, 2008, I caused copies of the foregoing DESIGNATION OF ITEMS FOR RECORD ON APPEAL TO COURT OF APPEALS AND STATEMENT OF ISSUES ON APPEAL to be served upon the parties listed below by first class United States mail, postage prepaid:

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